

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266-TSH

MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF'S ALTERNATIVE MOTION FOR LEAVE TO RESPOND  
TO DEFENDANT'S REPLY FACTS

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Plaintiff, American Manufacturers Mutual Insurance Company ("AMMIC"), has moved this Court for leave to respond to Defendant's Reply to Plaintiff's Response to Defendant's Local Rule 56.1 Statement of Material Facts Not in Dispute and Statement of Additional Facts in Opposition to Defendant's Motion for Partial Summary Judgment ("Town's Reply Facts") (docket entry no. 94).

AMMIC only requests that this Motion be allowed if the Court denies AMMIC's Motion to Strike Defendant's Reply Facts and Accompanying Affidavits, filed immediately prior to this Motion.

As grounds for its Motion, AMMIC states that the Town's Reply Facts (submitted in connection with its reply brief to AMMIC's opposition to the Town's motion for partial summary judgment) assert new evidence, argument and opinion in support of its *initial* Local Rule 56.1 Statement of Material Facts Not In Dispute. The Town's Reply Facts also submit thirty-eight *new* paragraphs of *additional* statements of fact – similarly accompanied by new evidence, argument and opinion.

While AMMIC has previously offered significant factual evidence to defeat the Town's Motion, it should not be deprived of the opportunity to address the Town's new and additional evidence, statements of fact, opinion and argument. Fairness and justice require that AMMIC be allowed to rebut these new materials in the same way AMMIC was entitled to rebut the Town's *initial* evidence, argument and opinion in its Motion. Otherwise, AMMIC will be deprived of its right under Fed. R. Civ. P. 56 to rebut the Town's new factual assertions. Moreover, as the Town's Motion goes to the very heart of the dispute between the parties this Court should give AMMIC every opportunity to respond to the many new pieces of evidence, argument and opinion asserted in the Town's Reply Facts.

Accordingly, the Court should allow this Motion for leave so that AMMIC can file its Response to the Town's Reply Facts attached to its Motion as Exhibit A.

Respectfully submitted,

**AMERICAN MANUFACTURERS  
MUTUAL INSURANCE COMPANY**

By its attorneys,

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